

SENATE BILL No. 120

February 20, 1991, Introduced by Senators O'BRIEN, HART,
KOIVISTO and PRIDNIA and referred to the Committee on
State Affairs and Military/Veteran Affairs.

A bill to license and regulate watercraft dealers; to pre-
scribe certain powers and duties for certain state departments
and agencies; to provide for the promulgation of rules; and to
establish remedies and penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "watercraft dealer licensing act".

3 Sec. 3. As used in this act:

4 (a) "Dealer license" means an original, renewal, or supple-
5 mental license issued under this act to engage in the business of
6 watercraft dealing.

7 (b) "Sales office" means a building, structure, dock, or any
8 premises where watercraft are routinely displayed for sale and
9 where business records may ordinarily be kept.

1 (c) "Watercraft" means either of the following:

2 (i) A watercraft subject to titling under Act No. 160 of the
3 Public Acts of 1976, being sections 281.1201 to 281.1223 of the
4 Michigan Compiled Laws.

5 (ii) Any other watercraft that is at least 20 feet in length
6 or has a retail value of more than \$1,500.00, including per-
7 manently affixed motors, accessories, and outboard engines.

8 (d) "Watercraft dealing" means the activity of acquiring,
9 buying, selling, trading, brokering, contracting to build, or
10 otherwise dealing in new or used watercraft at retail as a regu-
11 lar business within this state.

12 Sec. 5. (1) Beginning April 1, 1992, a person shall not
13 make a retail sale of a watercraft or otherwise engage in the
14 business of watercraft dealing in this state unless the person is
15 licensed under this act.

16 (2) Beginning April 1, 1992, the secretary of state shall
17 investigate and seek prosecution of any person who is engaged in
18 watercraft dealing without a dealer license as required by this
19 act.

20 Sec. 7. (1) An application to engage in the business of
21 watercraft dealing shall be filed with the secretary of state on
22 a form prescribed by the secretary of state. The application
23 shall contain all of the following information:

24 (a) The legal name of the dealership.

25 (b) The address and telephone number of the principal sales
26 office of the dealership.

1 (c) The form of ownership of the dealership, and, if a
2 corporation, the date and place of incorporation and the address
3 and telephone number of the corporation's headquarters.

4 (d) The name, home and business address, and home and busi-
5 ness telephone number of each owner, partner, principal officer,
6 director, and resident agent of the dealership.

7 (e) The principal occupation during the past 5 years of each
8 officer, director, partner, general manager, and owner of the
9 dealership.

10 (f) A statement of the previous history, record, and associ-
11 ations of each owner, partner, officer, director, and general
12 manager sufficient to establish to the satisfaction of the secre-
13 tary of state the sound business reputation and good moral char-
14 acter of these individuals.

15 (g) A statement showing whether an owner, partner, officer,
16 director, or general manager has been refused licensure as a
17 watercraft dealer or was the holder of a license for watercraft
18 dealing that has been revoked or suspended in this or any other
19 state.

20 (h) The business name under which the dealership will
21 operate.

22 (i) The address and telephone number of each sales office
23 operated by the dealership.

24 (j) The regular business hours of each dealership sales
25 office.

26 (k) A brief description of dealership assets, facilities,
27 and organizational structure.

1 (1) Any other information that the secretary of state
2 considers necessary to evaluate the applicant.

3 (2) An application shall be accompanied by all of the fol-
4 lowing documents and other materials:

5 (a) A properly executed surety bond, renewal certificate, or
6 other proof of surety as required by section 9.

7 (b) An irrevocable service of process agreement as required
8 by section 11.

9 (c) All fees required by this act.

10 (d) For an applicant seeking licensure as a nonresident
11 watercraft dealer, an appointment of a resident agent upon whom
12 any process, notice, or demand required or permitted by law to be
13 served upon the foreign watercraft dealer may be served. If a
14 foreign watercraft dealer is a corporation, the resident agent
15 shall be the person appointed to act as the corporation's agent
16 under section 241 of the business corporation act, Act No. 284 of
17 the Public Acts of 1972, being section 450.1241 of the Michigan
18 Compiled Laws. Any process, notice, or demand served on a resi-
19 dent agent appointed under this section shall have the same legal
20 effect as if personally served on the foreign watercraft dealer.

21 (3) An application shall include the signature of an owner,
22 partner, or principal officer of the dealership. This signature
23 shall operate to certify, under penalty of perjury, that the
24 information contained in the application is true and complete to
25 the best of the signer's knowledge, information, and belief.

26 (4) The secretary of state shall not accept and shall return
27 to the applicant each application that is incomplete on its face,

1 fails to be accompanied by the attachments specified in
2 subsection (2), or omits the signature required by
3 subsection (3).

4 (5) An application for a renewal license shall be in a form
5 prescribed by the secretary of state.

6 (6) As used in this section, "owner" means a stockholder of
7 a watercraft dealership holding 25% or more of the outstanding
8 stock.

9 Sec. 9. (1) An application for an original dealer license
10 shall be accompanied by a properly executed surety bond. The
11 bond shall be considered in effect continuously, from year to
12 year, for each succeeding year in the same amount and with the
13 same effect as an original bond until the secretary of state is
14 notified of its cancellation as provided in subsection (5). The
15 bond shall be in the sum of \$25,000.00 per year for each dealer-
16 ship sales office, with good and sufficient surety to be approved
17 by the secretary of state. The maximum potential liability of
18 the surety shall be calculated as \$25,000.00 times the number of
19 years the bond is in effect, times the number of sales offices.

20 (2) The bond shall be conditioned to indemnify or reimburse
21 a purchaser, seller, financing agency, or governmental agency for
22 monetary loss caused through fraud, cheating, or misrepresenta-
23 tion in the business of watercraft dealing, whether the fraud,
24 cheating, or misrepresentation was made by the dealer or by an
25 employee, agent, or salesperson of the dealer. The surety shall
26 be required to make indemnification or reimbursement for a
27 monetary loss only after a judgment based on fraud, cheating, or

1 misrepresentation has been entered in a court of record against
2 the watercraft dealer.

3 (3) The bond shall be conditioned to indemnify or reimburse
4 the state for any sales tax deficiency as provided in the general
5 sales tax act, Act No. 167 of the Public Acts of 1933, being
6 sections 205.51 to 205.78 of the Michigan Compiled Laws, or the
7 use tax act, Act No. 94 of the Public Acts of 1937, being
8 sections 205.91 to 205.111 of the Michigan Compiled Laws, for the
9 year in which the bond was in force. The surety shall be
10 required to indemnify or reimburse a monetary loss only after a
11 judgment based on fraud, cheating, or misrepresentation has been
12 entered in a court of record against the watercraft dealer.

13 (4) The aggregate liability of the surety shall not exceed
14 the sum of the bond for each annual period during which the bond
15 is in force.

16 (5) The surety on a bond may cancel the bond upon giving 30
17 days' notice in writing to the secretary of state. If the surety
18 provides the secretary of state with the notice required by this
19 subsection, the surety shall not be liable for a breach of condi-
20 tion occurring after the effective date of the cancellation.

21 Sec. 11. (1) An applicant for licensure under this act
22 shall file with the secretary of state, in a form approved by the
23 secretary, an irrevocable consent appointing the secretary of
24 state to be its agent to receive service of lawful process in any
25 noncriminal action or proceeding against it or its successor,
26 executor, or administrator which arises under this act or a rule
27 promulgated or order issued under this act after the consent is

1 filed, with the same validity as if served personally on the
2 person filing the consent.

3 (2) If a person, including a nonresident of this state,
4 engages in conduct prohibited by this act or a rule promulgated
5 or order issued under this act and has not filed an irrevocable
6 appointment of the secretary of state as an agent for service of
7 process, and personal jurisdiction over the person cannot other-
8 wise be obtained in this state, the conduct itself authorizes the
9 secretary of state to receive service of process in a noncriminal
10 proceeding against that person or the person's successor, if that
11 proceeding originates in conduct which is a violation of this act
12 or a rule promulgated under this act. The service shall have the
13 same validity as personal service.

14 (3) Service under subsection (1) or (2) may be made by
15 filing a copy of the process in the office of the secretary of
16 state, together with a \$25.00 fee. The service is not effective
17 unless the plaintiff or complainant, which may be the secretary
18 of state in an action or proceeding instituted by the secretary,
19 immediately sends notice of the service and a copy of the process
20 by certified mail to the defendant or respondent at his or her
21 last known address or takes other steps which are reasonably cal-
22 culated to give actual notice, and the plaintiff's or
23 complainant's affidavit of compliance with this section is filed
24 in the case on or before the return day of the process or within
25 the time period as the court allows.

26 Sec. 13. (1) An annual fee for a dealer license shall be
27 \$25.00.

1 (2) The fees collected pursuant to this act shall be
2 deposited in the Kenneth L. Wilson watercraft safety and educa-
3 tion fund created in section 10 of Act No. 160 of the Public Acts
4 of 1976, being section 281.1210 of the Michigan Compiled Laws,
5 and shall be used in the manner described in that section.

6 Sec. 15. (1) A dealer maintaining more than 1 sales office
7 shall file a single license application form or renewal applica-
8 tion form annually.

9 (2) A supplemental license shall be issued for each sales
10 office of the dealership other than its principal sales office
11 upon completion of a supplemental application form.

12 Sec. 17. (1) An original license shall not be granted until
13 an investigation of an applicant's qualifications for licensure
14 under this act has been made. The secretary of state shall make
15 the investigation within 30 days after receipt of an original
16 application.

17 (2) The secretary of state may investigate the qualifica-
18 tions of a dealer submitting a renewal or supplemental
19 application.

20 Sec. 19. The secretary of state may classify and differen-
21 tiate dealers as either a resident watercraft dealer or a nonres-
22 ident watercraft dealer.

23 Sec. 21. (1) The secretary of state shall furnish each
24 dealer whose application has been approved with an appropriate
25 wall license. The dealer shall prominently display an issued
26 wall license at the dealer's sale office. If the dealer has more
27 than 1 sales office, a separate wall license shall be issued for

1 each sales office. The secretary of state shall charge a \$7.50
2 fee for issuing a wall license and this fee shall accompany orig-
3 inal, renewal, and supplemental license applications.

4 (2) If a wall license is lost, destroyed, or mutilated, the
5 dealer to whom it was issued shall obtain a duplicate by furnish-
6 ing the secretary of state with satisfactory proof of the loss,
7 destruction, or mutilation and paying a fee of \$5.00.

8 Sec. 23. If an application for a dealer license is with-
9 drawn by the applicant or applicant's heir before issuance of a
10 license, the fees which accompanied the application may be
11 refunded by the secretary of state upon request and submission of
12 satisfactory proof of entitlement.

13 Sec. 25. (1) A dealer license shall expire on March 31 of
14 the year of issuance, regardless of when issued. The fee for an
15 application submitted after September 30 shall be 1/2 of the fee
16 for a full year.

17 (2) A dealer license may be renewed within 90 days before
18 expiration. A license not renewed shall become void and may be
19 reinstated only upon application for reinstatement and payment of
20 a \$25.00 reinstatement fee in addition to the renewal fees. An
21 original application and related fees shall be submitted if a
22 dealer license is not renewed within 3 months after expiration.

23 Sec. 27. (1) A watercraft dealer shall maintain a record in
24 a form prescribed by the secretary of state of each watercraft
25 which is bought, sold, or exchanged by the dealer or otherwise
26 accepted by the dealer for sale or exchange. Each record shall
27 contain the date of the purchase, sale, or exchange or receipt

1 for the purpose of sale, and a description of the watercraft,
2 together with the name and address of the seller, of the purchas-
3 er, and of the alleged owner or other persons from whom the
4 watercraft was purchased or received, or to whom it was sold or
5 delivered. The description of the watercraft shall include the
6 identification number of the watercraft, other numbers or identi-
7 fication marks as may be on the watercraft, identification number
8 of any outboard engine, and a statement that numbers or marks
9 have been obliterated, defaced, or changed, if that is the fact.
10 The record shall indicate whether a certificate of title or
11 watercraft registration was obtained by the dealer.

12 (2) Not more than 20 days after the delivery of a watercraft
13 by a dealer, the dealer shall deliver to the buyer in person or
14 mail to the buyer's last known address a duplicate of a written
15 statement, on a form prescribed by the secretary of state in con-
16 junction with the department of treasury, describing clearly the
17 dealer's name and address, the name and address of the buyer, the
18 watercraft sold to the buyer, the cash sale price of the water-
19 craft, the cash paid down by the buyer, the amount credited the
20 buyer for a trade-in, a description of the trade-in, the amount
21 of any finance charge, the amount charged for watercraft insur-
22 ance, stating the types of insurance covered by the insurance
23 policy, the amount of any other charge specifying its purpose,
24 the net balance due from the buyer, the terms of the payment of
25 the net balance, and a summary of insurance coverage to be
26 affected. The written statement shall be dated, but it shall not
27 be dated later than the actual date of delivery of the watercraft

1 to the buyer. The original and all copies of the prescribed form
2 shall contain identical information. The statement shall be fur-
3 nished by the dealer, shall be signed by the dealer or the
4 dealer's agent and by the buyer, and shall be filed with the
5 application for new title or registration.

6 (3) Failure of the dealer to deliver the written statement
7 described in subsection (2) to the buyer shall not invalidate the
8 sale between the dealer and the buyer.

9 (4) A retail watercraft sale shall be voidable at the option
10 of the buyer unless the conditions set forth in section 29 are
11 met.

12 (5) In addition to the other records required to be main-
13 tained under this act, a watercraft dealer shall maintain records
14 as are required by rules promulgated to carry out this act.

15 (6) If the name or address of a watercraft dealer changes
16 but does not involve a change of ownership, the dealer shall
17 within 7 days following the effective date of the change provide
18 written notification of the change to the secretary of state. If
19 other information contained in a record filed with the secretary
20 of state is or becomes inaccurate or incomplete in any material
21 respect, a dealer shall file a correcting amendment within a rea-
22 sonable time with the secretary of state.

23 (7) A record required to be filed or maintained under this
24 act shall be open for reasonable inspection by the secretary of
25 state and other law enforcement officers during the dealer's reg-
26 ular business hours and at such other times as are mutually
27 agreed upon by the dealer and the inspector.

1 Sec. 29. (1) A retail sale of watercraft shall be evidenced
2 by a written sales instrument supplied by the dealer. A sales
3 instrument shall contain all of the agreements between the par-
4 ties and be signed by the buyer and the dealer or the dealer's
5 agent.

6 (2) A sales instrument shall be dated and completed before
7 being signed by the buyer. The dealer or the dealer's agent
8 shall sign the sales instrument at the time the buyer signs the
9 instrument.

10 (3) An extra copy of the sales instrument shall be furnished
11 to the buyer by the dealer at the time the buyer signs the
12 instrument. The buyer's copy of the sales instrument shall con-
13 tain the signature of the dealer or the dealer's agent identical
14 with the dealer's or the dealer's agent's signature on the origi-
15 nal instrument. The signature of a dealer's agent is presumed to
16 be an authorized signature.

17 (4) A sales instrument required by this section shall con-
18 tain at least the following information, as far as applicable:

19 (a) The name of the dealer.

20 (b) The name of the buyer.

21 (c) The make, year, and model of the watercraft.

22 (d) The identification number of the watercraft.

23 (e) An itemized list of each option or accessory on the
24 watercraft stating whether the option or accessory will be
25 installed by the manufacturer or a dealer.

26 (f) A statement as to whether the watercraft is new or used;
27 whether the watercraft has been used as a demonstrator, police

1 watercraft, executive or manufacturer's watercraft, or leased by
2 a political subdivision of this state; and whether the watercraft
3 has previously been issued a salvage certificate of title; or
4 that the dealer has no knowledge of and makes no representation
5 of the vehicle's former use or history.

6 (g) The cash sale price.

7 (h) The cash paid down by the buyer.

8 (i) A description of any trade-in watercraft.

9 (j) The amount of allowance credited to the buyer for the
10 trade-in watercraft.

11 (k) If the dealer is making an outright purchase of the
12 trade-in watercraft, the amount of the purchase price the dealer
13 will pay to the buyer for the trade-in watercraft.

14 (l) A provision as to whether the buyer or dealer is to pay
15 off the indebtedness, if any, on the trade-in watercraft.

16 (m) The net balance due from the buyer and the terms of
17 payment.

18 (5) A trade-in allowance or a purchase price agreed to in
19 the sales instrument for a buyer's trade-in watercraft shall not
20 be reduced upon delivery of the trade-in watercraft unless the
21 value of the trade-in watercraft is materially diminished as a
22 result of physical damage, alteration, or deterioration in
23 mechanical condition other than normal wear and tear.

24 (6) A retail watercraft sale is subject to cancellation by
25 either party and includes a refund of any deposit, down payment,
26 or other consideration made by the buyer. This right to cancel
27 shall be printed prominently in the sales instrument. If a

1 buyer's request to cancel a retail watercraft sales agreement
2 occurs pursuant to the terms of the sales instrument, the dealer
3 shall honor the buyer's request and refund any deposit, down pay-
4 ment, or other consideration held by the dealer.

5 (7) Every sales instrument shall contain the following
6 notice, printed prominently and in the form indicated, directly
7 above the space provided in the sales instrument for the signa-
8 ture of the buyer:

9 "Notice to buyer: Do not sign this document blank. You are
10 entitled to 1 true copy of the document you sign. Keep it to
11 protect your legal rights."

12 (8) The dealer shall obtain from the buyer a written
13 acknowledgment of the delivery of the copy of the sales instru-
14 ment to the buyer. The acknowledgment shall be printed promi-
15 nently below the buyer's signature on the sales instrument and
16 shall be independently signed.

17 (9) A dealer or dealer's agent shall not accept a deposit,
18 down payment, or other consideration for a retail watercraft sale
19 until a sales instrument for that retail watercraft sale is
20 signed by the buyer and the dealer or the dealer's agent.

21 (10) As used in this section:

22 (a) "Distributor" means any person, resident or nonresident,
23 who in whole or in part offers for sale, sells, or distributes
24 any new watercraft to a new watercraft dealer or who maintains a
25 factory representative, resident or nonresident, or who controls
26 any person, resident or nonresident, who in whole or in part

1 offers for sale, sells, or distributes any new watercraft to a
2 new watercraft dealer.

3 (b) "Retail watercraft sale" means both of the following:

4 (i) A transaction by which the ownership of a watercraft is
5 transferred for consideration, if the transfer is made in the
6 ordinary course of a dealer's business to any person who is not a
7 dealer.

8 (ii) A transaction in which a new watercraft dealer for con-
9 sideration enters into a binding agreement with a person who is
10 not a dealer for the sale of a new watercraft that is to be
11 ordered by the dealer from a manufacturer or distributor for
12 delivery to the person.

13 Sec. 31. (1) A dealer licensed as a nonresident watercraft
14 dealer shall maintain records in a form as prescribed by the sec-
15 retary of state. The records shall identify each watercraft
16 bought, acquired, or sold by the dealer in this state. The
17 records shall identify the person from whom a vehicle was bought
18 or acquired and the person to whom the vehicle was sold.

19 (2) A licensed nonresident watercraft dealer is considered
20 to have given express consent authorizing an officer or investi-
21 gator of the secretary of state to inspect the records of the
22 dealer in the nonresident state or county of the dealer or to
23 have the records brought to this state within 48 hours after rea-
24 sonable notice of the time and place of inspection. Failure to
25 present the records within 48 hours shall be sufficient cause for
26 the secretary of state to suspend or revoke the license of the
27 dealer.

1 Sec. 33. A person engaged in watercraft dealing shall not
2 do any of the following:

3 (a) Advertise or misrepresent a watercraft year of manufac-
4 ture as other than model year.

5 (b) Misapply a deposit related to the purchase of a particu-
6 lar watercraft.

7 (c) Engage in consumer fraud, or any other method, act, or
8 practice which is unfair or deceptive.

9 Sec. 35. (1) A person engaged in watercraft dealing shall
10 not engage in a method, act, or practice that is unfair or
11 deceptive.

12 (2) An unfair or deceptive method, act, or practice shall
13 include, but is not limited to, all of the following:

14 (a) A contract that uses a waiver to circumvent or evade
15 this act.

16 (b) A contract that takes advantage of a customer's inabil-
17 ity to reasonably protect his or her interest due to illiteracy
18 or inability to understand the language used in the purchase
19 agreement, if the dealer knows or reasonably should know of the
20 customer's inability.

21 (c) A contract that has gross discrepancies between the oral
22 representations of the dealer and the written agreement covering
23 the same transactions.

24 (d) Making, either written or orally, an untrue or mislead-
25 ing statement of material fact.

1 (e) Failing to reveal a material fact, the omission of which
2 tends to mislead or deceive the customer and which fact could not
3 reasonably be known by the customer.

4 (f) Entering into a contract that attempts to abrogate, dis-
5 claim, or disallow the legal rights, obligations, or remedies of
6 a customer.

7 (g) Allowing a customer to sign an acknowledgment, certifi-
8 cate, or other writing that affirms acceptance, delivery, or com-
9 pliance with a requirement of law, or other performance, if the
10 dealer knows or has reason to know that the statement is not
11 true.

12 (h) Contractual provisions, including the statement of sale
13 or disclaimers, that are not specific in language, clearly
14 described, or reasonably legible.

15 (i) Failing to promptly restore to a person any deposit,
16 down payment, or other payment when a contract is canceled or
17 otherwise terminated in accordance with the terms of the con-
18 tract, an advertisement, a representation, or under this act or
19 other provision of law.

20 (j) Allowing a customer to sign a document in blank relating
21 to the sale of a watercraft.

22 (k) Failing to give the customer a copy of a document at the
23 time of its signing by the customer.

24 (l) Disclaiming or limiting the implied warranty of mer-
25 chantability or fitness for use, unless excluded or modified pur-
26 suant to section 2316 of the uniform commercial code, Act No. 174

1 of the Public Acts of 1962, being section 440.2316 of the
2 Michigan Compiled Laws.

3 (m) Failing to honor an express warranty.

4 (n) Failing to disclose in clear written language the
5 nature, scope, and material aspects of a warranty including, but
6 not limited to, what is warranted, who will honor the warranty,
7 the duration of the warranty, obligations of the person to whom
8 the warranty is extended, and exceptions and exclusions from the
9 terms of the written warranty.

10 (o) Seeking the repossession of a watercraft where the
11 dealer has violated this act with respect to the transaction upon
12 which the repossession is based.

13 (p) Seeking to assert or enforce a lien to the extent of
14 refusing to return a watercraft where the dealer has violated
15 this act with respect to the transaction upon which the refusal
16 is based.

17 (q) Failing to comply with the truth in lending act, title I
18 of Public Law 90-321, 15 U.S.C. 1601 to 1613, 1631 to 1635, 1637
19 to 1638, 1640 to 1647, and 1661 to 1667e, and the retail install-
20 ment sales act, Act No. 224 of the Public Acts of 1966, being
21 sections 445.851 to 445.873 of the Michigan Compiled Laws, where
22 the customer finances the watercraft through the dealer.

23 (3) It is an unfair and deceptive practice for a dealer to
24 advertise or represent, either directly or indirectly, 1 or more
25 of the following:

26 (a) Reduced prices for products or services that are not
27 sold at the advertised price during the period of the offering.

1 (b) Products or services at a particular price during a
2 particular period, if there is a failure to extend the offer
3 beyond that period to persons seeking but not obtaining the prod-
4 ucts or services during the advertised period because the dealer
5 has failed to prepare for the reasonably expected public demand.

6 (c) That a customer will receive products or services
7 "free", "without charge", or words of similar import, if there
8 are undisclosed conditions, terms, or limitations attached to the
9 offering.

10 (d) That a customer will receive a rebate, discount, or
11 other benefit as an inducement for entering into a contract, if
12 the benefit is contingent on an event to occur after the consum-
13 mation of the transaction.

14 (e) That a customer's failure to act quickly or within a
15 certain period of time to procure products or services will
16 result in the loss of opportunity to procure them at a particular
17 price, if this is not the case.

18 (f) Credit availability in a manner as to cause a likelihood
19 of confusion or of misunderstanding as to the terms or conditions
20 of credit, or that credit availability or terms are "easy" or
21 words of similar import, if that is not the case.

22 (g) That products or services are sold under the terms of
23 "satisfaction guaranteed or money back" or words of similar
24 import, if the customer's declaration of dissatisfaction is not
25 the sole criterion for the refund of money on purchases so
26 warranted.

1 (h) The necessity, desirability, or advantage to a
2 prospective customer of dealing with the dealer by
3 misrepresenting the dealer's alleged advantages of size.

4 (i) That a document which a customer signs is something
5 other than what it is.

6 (j) That service on an offered product is available under a
7 warranty, if it is not available or if there are undisclosed lim-
8 itations or conditions on the availability of that service.

9 (k) Products or services not meeting the reasonably expected
10 public demand for the duration of the advertised offering, except
11 where the advertisement has clearly expressed a specific limita-
12 tion on the quantity of the advertised products or services.

13 Sec. 37. (1) A licensed watercraft dealer may, upon payment
14 of applicable fees, secure watercraft dealer plates issuable
15 under section 244 of the Michigan vehicle code, Act No. 300 of
16 the Public Acts of 1949, being section 257.244 of the Michigan
17 Compiled Laws, for use on boat trailers owned by the watercraft
18 dealer to whom the plates are issued while being used in connec-
19 tion with the dealer's business. These plates shall not be valid
20 for use for hire.

21 (2) When a licensed watercraft dealer registers a boat
22 trailer he or she owns and secures a regular registration plate
23 for the trailer, the dealer may, upon sale of the trailer, submit
24 a transfer fee to the secretary of state, along with an applica-
25 tion to transfer the plate, and transfer the plate to a com-
26 parable boat trailer owned by the dealer.

1 Sec. 39. Whenever a dealer acquires a new watercraft, the
2 dealer shall obtain and maintain for at least 3 years a copy of a
3 manufacturer's or importer's certificate of origin from the
4 transferor.

5 Sec. 41. (1) If a dealer acquires a watercraft for the pur-
6 pose of resale and procures the certificate of title from the
7 owner or lienholder within 10 days after receiving the water-
8 craft, the dealer need not forward the certificate to the secre-
9 tary of state but, within 15 days after transferring the water-
10 craft to another person, shall execute the assignment and war-
11 ranty of title by a dealer, showing the names and addresses of
12 the transferee and of each lienholder holding a security interest
13 created or reserved at the time of the assignment, noting the
14 existence of the security agreement in the space provided for
15 that purpose on the certificate of title, and mail or deliver the
16 original certificate to the secretary of state, along with the
17 transferee's application for a new title.

18 (2) If a dealer does not procure a certificate of title
19 within the 10-day period specified in subsection (1), the dealer
20 shall apply for title to the watercraft in the dealer's own
21 name.

22 (3) A dealer need not give notice to the secretary of state
23 of transferring a new watercraft to another dealer licensed under
24 this act.

25 Sec. 43. (1) A dealer selling or exchanging watercraft
26 required to be titled, within 15 days after delivering a
27 watercraft to the purchaser, shall apply to the secretary of

1 state for a new title, if required, and secure a certificate of
2 registration for the watercraft in the name of the purchaser. A
3 dealer license may be suspended or revoked as provided in this
4 act for failure to apply for a title when required or for failure
5 to secure a certificate of registration within the 15 days
6 provided. If the dealer fails to apply for a title within 15
7 days after delivery of the watercraft, a title and registration
8 for the watercraft may be acquired only upon the payment of a
9 transfer fee of \$15.00 in addition to the fees provided for in
10 Act No. 160 of the Public Acts of 1976, being sections 281.1201
11 to 281.1223 of the Michigan Compiled Laws. The purchaser of the
12 watercraft shall sign the application and other necessary papers
13 to enable the dealer to secure the title, registration, and
14 transfers from the secretary of state.

15 (2) If a watercraft is delivered to a purchaser and an
16 application for title and registration for the watercraft are not
17 made before delivery of the watercraft to the purchaser, the
18 dealer may provide the purchaser with an instrument in writing,
19 on a form prescribed by the secretary of state, that shall serve
20 as a temporary registration for the watercraft for a period of 15
21 days following the date the watercraft is delivered, so long as
22 the dealer also applies for a regular registration for the
23 purchaser.

24 (3) An application for a certificate of title that indicates
25 the existence of a security interest in the watercraft or in an
26 accessory to the watercraft shall, if requested by the security
27 interest holder, be accompanied by a copy of the security

1 agreement which need not be signed. The secretary of state shall
2 indicate on the copy the date and place of filing of the applica-
3 tion and return the copy to the person submitting the application
4 who shall forward it to the holder of the security interest named
5 in the application.

6 (4) If the seller does not prepare the credit information,
7 contract, note, and mortgage and the holder, finance company, or
8 financial institution requires the installment seller to record
9 the lien on the title, the holder, finance company, or financial
10 institution shall pay the seller a service fee of not more than
11 \$10.00. The service fee shall be paid from the finance charges
12 and shall not be charged to the buyer in addition to the finance
13 charges. The holder, finance company, or financial institution
14 shall issue its check or bank draft for the principal amount
15 financed, payable jointly to the buyer and seller, and there
16 shall be imprinted on the back side of the check or bank draft
17 the following:

18 UNDER MICHIGAN LAW, THE SELLER MUST RECORD A FIRST LIEN IN
19 FAVOR OF (NAME OF LENDER) _____ ON THE WATERCRAFT WITH
20 WATERCRAFT IDENTIFICATION NUMBER _____ AND TITLE THE WATER-
21 CRAFT ONLY IN THE NAME(S) SHOWN ON THE REVERSE SIDE.
22 ON THE FRONT OF THE SALES CHECK OR DRAFT, THE HOLDER, FINANCE
23 COMPANY, CREDIT UNION, OR BANKING INSTITUTION SHALL NOTE THE
24 NAME(S) OF THE PROSPECTIVE OWNER(S). FAILURE OF THE HOLDER,
25 FINANCE COMPANY, CREDIT UNION, OR FINANCIAL INSTITUTION TO COMPLY
26 WITH THESE REQUIREMENTS SHALL FREE THE SELLER FROM ANY OBLIGATION
27 TO RECORD THE LIEN OR FROM ANY AND ALL LIABILITY THAT MAY ARISE

1 AS A RESULT OF THE FAILURE TO RECORD THE LIEN. A SERVICE FEE
2 SHALL NOT BE CHARGED TO THE BUYER.

3 (5) When a nonresident watercraft dealer submits an applica-
4 tion for a new certificate of title or watercraft registration to
5 the secretary of state for the sale or exchange of a watercraft
6 in compliance with this section, the dealer shall also submit a
7 sales tax receipt to the secretary of state for that watercraft
8 sale or exchange. The dealer's license may be suspended or
9 revoked as provided in this act for failure to submit a sales tax
10 receipt when required.

11 (6) A watercraft dealer shall keep and maintain for not less
12 than 5 years a copy of each certificate of title, watercraft reg-
13 istration, or sales tax receipt received, applied for, or submit-
14 ted to the secretary of state in connection with each watercraft
15 bought, sold, transferred, or exchanged by the dealer. These
16 records shall be open to inspection by the secretary of state or
17 a law enforcement officer as provided for by this act.

18 Sec. 45. The secretary of state, in administering this act,
19 shall do all of the following:

20 (a) License all watercraft dealers who may be subject to
21 this act.

22 (b) Promulgate rules pursuant to the administrative proce-
23 dures act of 1969, Act No. 306 of the Public Acts of 1969, being
24 sections 24.201 to 24.328 of the Michigan Compiled Laws, to
25 implement this act.

26 (c) Maintain records concerning watercraft dealers licensed
27 under this act. These records shall be open to public inspection

1 pursuant to the freedom of information act, Act No. 442 of the
2 Public Acts of 1976, being sections 15.231 to 15.246 of the
3 Michigan Compiled Laws.

4 (d) Prepare an accurate list by name, business address, and
5 license number of all licensed watercraft dealers.

6 (e) Engage in a public information program designed to
7 inform consumers of their rights and remedies under this act.

8 (f) Annually notify watercraft dealers of any new rules
9 promulgated under this act; of representative disciplinary
10 actions, decisions, orders, and convictions obtained under this
11 act; and of probations, suspensions, and revocations pertaining
12 to watercraft dealer licenses.

13 (g) Establish procedures for receiving complaints related to
14 alleged violations of this act or of rules promulgated to imple-
15 ment the act.

16 (h) Collect fees and costs for investigating applicants,
17 processing applications, licensing watercraft dealers, and per-
18 forming related services.

19 Sec. 47. Each sales office, location where inventory is
20 kept, watercraft, and place where dealership property is situated
21 which is owned or operated by a watercraft dealer licensed under
22 this act or person required to be licensed under this act, shall
23 be open to inspection by the secretary of state or a law enforce-
24 ment officer during regular business hours of the licensee. A
25 person shall not hinder, obstruct, or otherwise prevent an
26 inspection.

1 Sec. 49. The secretary of state may, on his or her own
2 initiative or in response to a complaint, make reasonable and
3 necessary public or private investigations within or outside of
4 this state and gather evidence against a person who has violated
5 or is about to violate this act or a rule promulgated or an order
6 issued under this act. In addition, the secretary of state may,
7 on his or her own initiative, conduct spot check investigations
8 of watercraft dealerships licensed or required to be licensed
9 throughout the state on a continuous basis to determine whether
10 the dealership is in compliance with this act and rules promul-
11 gated under this act. The secretary of state shall not deliber-
12 ately misrepresent the age or condition of a watercraft employed
13 in an investigation.

14 Sec. 51. Before commencement of a formal administrative
15 proceeding, the secretary of state may issue a statement of
16 intent to commence proceedings to a dealer or person who is a
17 subject of an investigation relating to possible violations of
18 this act and rules promulgated under this act. The notice shall
19 state that the subject of the investigation shall have an infor-
20 mal opportunity to show why formal proceedings should not be com-
21 menced against him or her. If a response satisfactory to the
22 secretary of state is received, then further proceedings under
23 this act shall not be required.

24 Sec. 53. In connection with an investigation or proceeding
25 commenced pursuant to this act, the secretary of state may do any
26 of the following:

1 (a) Require or permit a person to file a statement in
2 writing, or otherwise as the secretary of state determines, as to
3 all the facts and circumstances concerning a matter being
4 investigated.

5 (b) Mediate disputes between parties arising from a viola-
6 tion of this act or a rule promulgated under this act after
7 establishing a system of informal dispute resolution for com-
8 plaints or allow the parties to use another informal dispute res-
9 olution system as the parties may agree.

10 (c) In lieu of further disciplinary proceedings, develop
11 conditions of probation or operation for the dealership if those
12 conditions are mutually agreed upon and evidenced in a writing
13 signed by the dealer and the secretary of state.

14 Sec. 55. (1) In mediating a dispute between parties assert-
15 ing a violation of this act or a rule promulgated under this act,
16 the secretary of state may accept from a watercraft dealer a vol-
17 untary assurance that the dealer will discontinue conduct result-
18 ing in a violation of this act or a rule promulgated under this
19 act. The assurance shall be set forth in writing, filed in the
20 records of the secretary of state, and open for public inspec-
21 tion, but shall not constitute on the part of the dealer making
22 the assurance an admission of any issue of fact or law. The
23 assurance, subject to agreement by all parties, may contain the
24 following provisions:

25 (a) That the dealer will refund to an individual consumer an
26 amount of money agreed upon by the parties.

1 (b) That the dealer shall take affirmative action in
2 addition to restitution as is considered appropriate in the
3 opinion of the secretary of state to correct an alleged violation
4 of this act or a rule promulgated under this act.

5 (c) That the dealer shall place in escrow a sum of money for
6 the purposes of restitution to an aggrieved consumer pending the
7 outcome of an action pursuant to this act. If the dealer accepts
8 the secretary of state's suggestions and performs accordingly,
9 that fact shall be given due consideration in any subsequent dis-
10 ciplinary proceeding.

11 (2) An assurance shall constitute a contract which may be
12 enforced by the parties and the secretary of state in a court of
13 competent jurisdiction.

14 Sec. 57. The absence or expiration of a dealer license
15 shall not restrict the secretary of state from proceeding with an
16 investigation, court petition, disciplinary proceeding, or other
17 action authorized by this act against a person engaged in water-
18 craft dealing.

19 Sec. 59. (1) For the purpose of an investigation or pro-
20 ceeding under this act, the secretary of state may administer
21 oaths or affirmations, and upon motion of the attorney general or
22 upon the motion of a party to a proceeding, apply to the circuit
23 court for Ingham county for a subpoena. If in the judgment of
24 the court there are reasonable grounds to believe a subpoena
25 should be issued, the court shall issue a subpoena to compel the
26 attendance of the designated person, take evidence, or require

1 the production of any material which is relevant to the
2 investigation or proceeding before the secretary of state.

3 (2) Upon failure to obey a subpoena of the court or to
4 answer questions propounded by the secretary of state, after rea-
5 sonable notice to the persons subpoenaed, an application may be
6 made to the circuit court for Ingham county for an order compel-
7 ling compliance.

8 Sec. 61. (1) If the secretary of state determines after
9 notice and a hearing that a person has violated this act or a
10 rule promulgated under this act, or has engaged in an unfair or
11 deceptive method, act, or practice, directly or through an agent
12 or employee, the secretary of state may issue an order requiring
13 the person to cease and desist from the unlawful act or practice
14 or to take affirmative action as in the secretary's judgment will
15 carry out the purposes of this act.

16 (2) If the secretary of state makes a written preliminary
17 finding of fact declaring that the public interest will be irrep-
18 arably harmed by a delay in the issuance of a temporary cease and
19 desist order, the secretary of state may issue such an order.
20 Prior to issuing a temporary cease and desist order, the secre-
21 tary of state shall endeavor to give notice of the proposed issu-
22 ance of the temporary order to the watercraft dealer by telephone
23 or otherwise. A temporary cease and desist order shall include
24 in its terms a provision specifying that upon request, a hearing
25 shall be held within 30 days to determine whether or not the
26 order shall become permanent. If a hearing is not requested

1 pursuant to this subsection, the order shall automatically become
2 permanent 30 days after issuance.

3 Sec. 63. (1) Before denying an application or taking formal
4 action against a dealer license, the secretary of state shall
5 afford the applicant or dealer an opportunity for an evidentiary
6 hearing. If a hearing is conducted, the secretary of state shall
7 first provide at least 10 days' notice of the hearing and deter-
8 mine whether the applicant or dealer has done any of the
9 following:

10 (a) Made an untrue statement of a material fact in a dealer
11 license application, in the course of negotiating a watercraft
12 sale, or in a sales related document.

13 (b) Violated this act or a rule promulgated under this act.

14 (c) Violated a condition of probation or the terms of a vol-
15 untary assurance or a final cease and desist order.

16 (d) Caused or allowed a consumer to sign an incomplete docu-
17 ment relating to the purchase of a watercraft.

18 (e) Failed to establish his or her good moral character in
19 connection with business operations.

20 (2) If, after an evidentiary hearing, the secretary of state
21 determines that an applicant or dealer has committed 1 or more of
22 the violations enumerated in subsection (1), the secretary of
23 state may do 1 or more of the following:

24 (a) Issue a written letter of warning.

25 (b) Deny an application.

26 (c) Grant a license with or without conditions of probation
27 imposed.

1 (d) Suspend or revoke a license.

2 (e) Impose a period of probation during which the dealer
3 shall comply with conditions of conduct specified by the secre-
4 tary of state.

5 (f) Require that financial restitution be made to a consumer
6 and suspend the license until restitution is paid.

7 (g) Impose a civil fine not to exceed \$15,000.00 for each
8 violation, and suspend the license until the fine is paid.

9 (h) Order the applicant or dealer to pay actual costs asso-
10 ciated with investigating the matters at issue and with conduct-
11 ing the evidentiary hearing and suspend the license until the
12 costs are paid.

13 Sec. 65. An appeal pursuant to the administrative proce-
14 dures act, Act No. 306 of the Public Acts of 1969, being
15 sections 24.201 to 24.328 of the Michigan Compiled Laws, shall
16 act as a stay upon any order, determination, decision, or action
17 appealed from, unless the secretary of state establishes to the
18 satisfaction of the court that immediate enforcement of the
19 order, determination, decision, or action is necessary to avoid
20 substantial peril to life or property.

21 Sec. 67. (1) A dealer who personally or through his or her
22 agents or employees violates this act or who, in a course of
23 dealing as set forth in this act or the rules promulgated to
24 implement the act, engages in fraud or in an unfair or deceptive
25 method, act, or practice, is liable as provided in this act to a
26 person who suffers damage or injury as a result of the violation

1 in an amount equal to the damages plus actual and reasonable
2 attorney fees and costs.

3 (2) If the damage or injury to the person occurs as the
4 result of a willful and flagrant violation of this act, the
5 person shall recover triple the damages plus actual and reason-
6 able attorney fees and costs.

7 Sec. 69. A person who directly or indirectly controls or
8 manages a watercraft dealership or its employees, as well as a
9 general partner, officer, director, or general manager of the
10 dealership, shall be jointly and severally liable among them-
11 selves for a violation of this act, unless the person can demon-
12 strate that he or she did not know, and in the exercise of rea-
13 sonable care could not have known, of the existence of the facts
14 by reason of which the violation occurred. There is a right to
15 contribution as in cases of contract among persons so liable.

16 Sec. 71. An owner, resident agent, director, officer, part-
17 ner, or general manager of a watercraft dealership who knowingly
18 authorizes, directs, or makes a false or fraudulent statement or
19 misrepresentation concerning the method or price of sale of a
20 watercraft, or who knowingly fails to comply with the terms of a
21 voluntary assurance or a final cease and desist order, is subject
22 to penalties under this act. Each violation constitutes a sepa-
23 rate offense.

24 Sec. 73. A dealer, or an agent or employee of a watercraft
25 dealer license under this act, who knowingly violates this act is
26 guilty of a misdemeanor, punishable by imprisonment for not more
27 than 90 days or a fine of not more than \$1,000.00, or both, for

1 the first conviction, and by imprisonment for not more than 1
2 year or a fine of not more than \$5,000.00, or both, for any sub-
3 sequent conviction.

4 Sec. 75. (1) A person who engages or attempts to engage in
5 the business of watercraft dealing without a license, or engages
6 in an act or practice in violation of this act or a rule promul-
7 gated under this act, is barred from bringing or maintaining an
8 action at law or equity on a contract entered into for the sale
9 of a watercraft. In addition, the person is barred from assert-
10 ing a garagekeeper's or similar lien upon a watercraft, including
11 repossession of a watercraft.

12 (2) A customer may recover any amount paid to an unlicensed
13 dealer for the purchase of a watercraft and may retain ownership
14 of the watercraft at his or her option.

15 Sec. 77. This act shall take effect October 1, 1992.

16 Sec. 79. This act shall not take effect unless all of the
17 following bills of the 86th Legislature are enacted into law:

18 (a) Senate Bill No. ____ or House Bill No. ____ (request
19 no. 01490'91).

20 (b) Senate Bill No. 122.

21